OPINION OF ADVOCATE GENERAL JACOBS
delivered on 15 May 1997 *

1. This case, referred by the Tribunal des Affaires de Sécurité Sociale d'Evry (Social Security Court, Evry), concerns the entitlement of an Algerian national resident in France to a special allowance payable in France to disabled adults. The case also raises the issue whether the Court should rule where the dispute giving rise to the reference appears to have been settled after the reference was lodged but the national court does not withdraw the reference.

The relevant Community legislation

2. The entitlement to social security benefits of Algerian workers and their families resident in the Community is governed by the Cooperation Agreement between the European Economic Community and the People's Democratic Republic of Algeria, signed in Algiers on 26 April 1976 and approved on behalf of the Community by Council Regulation (EEC) No 2210/78 ('the Agreement'). [1]

3. The object of the Agreement is to promote overall cooperation between the Contracting Parties with a view to helping to strengthen relations between them and to contributing to the economic and social development of Algeria. [2]

4. Article 39(1) provides that, subject to the following paragraphs of Article 39, none of which is relevant to the present case, workers of Algerian nationality and any members of their families living with them shall enjoy, in the field of social security, treatment free from any discrimination based on nationality in relation to nationals of the Member State in which they are employed.

5. The Court has ruled that, since the term 'social security' in the identically worded provision of the Cooperation Agreement between the European Economic Community and the Kingdom of Morocco [3] cannot receive a definition different from that indicated in the context of Council Regulation (EEC) No 1408/71 on the application of

* Original language: English.

1 — Council Regulation (EEC) No 2210/78 of 26 September 1978 concerning the conclusion of the Cooperation Agreement between the European Economic Community and the People's Democratic Republic of Algeria, OJ 1978 L 263, p. 1.

2 — Article 1.

3 — Signed at Rabat on 27 April 1976 and approved on behalf of the Community by Council Regulation (EEC) No 2211/78 of 26 September 1978, OJ 1978 L 264, p. 1.

social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, [4] disability allowances come within the purview of social security within the meaning of that provision. [5]

The facts and the national legislation

6. The *allocation aux adultes handicapés* ('disabled adults' allowance') was introduced by Law No 75/534 of 30 June 1975. The grant of the allowance is governed by Title II of Chapter VIII of the new French social security code. That code provides that the allowance is available to every French national or national of a State that has concluded a reciprocal agreement, subject to certain conditions as to the extent of the applicant's handicap and the receipt of other benefits. [6]

7. Mrs Djabali, a disabled Algerian national, applied to the Caisse d'Allocations Familiales ('CAF'), Essonne, for a disabled adults' allowance with effect from October 1993. It appears to be accepted that she satisfies the abovementioned conditions. The documents on the national court's file, submitted to the Court, suggest that that application was initially granted; however, it was presumably refused thereafter, since Mrs Djabali appealed to the CAF's Commission de Recours Amiable (appeals board). On 13 July 1994 the appeals board dismissed her appeal, apparently on the ground that Mrs Djabali was neither a French national nor a national of a State that had concluded a reciprocal social security agreement with France. On 14 June 1995 Mrs Djabali brought an action before the Tribunal des Affaires de Sécurité Sociale ('the Tribunal'), arguing that the refusal to award her the disabled adults' allowance was in breach of Article 39 of the Agreement.

8. The CAF contended before the Tribunal that the disabled adults' allowance was to be seen as a social security benefit only when the applicant was or had been a worker and had therefore contributed in general to the social security system. It argued that Mrs Djabali was not entitled to the benefit on the basis that she had never been employed in France and was hence not a 'worker or former migrant worker'.

9. On 28 May 1996, the Tribunal stayed the proceedings and referred the following question to the Court of Justice for a preliminary ruling:

'Does Article 39 of Council Regulation (EEC) No 2210/78 of 26 September 1978

4 — See for the consolidated version applicable at the material time Annex I to Council Regulation (EEC) No 2001/83, OJ 1983 L 230, p. 6. The latest consolidated version is published as Part I of Annex A to Council Regulation (EEC) No 118/97 of 2 December 1996, OJ 1997 L 28, p. 1. With regard to the inclusion of the French disabled adults' allowance in the scope of Regulation No 1408/71, see in particular Articles 4(2)(a) and 10a and Annex IIa.

5 — Case C-58/93 *Yousfi* [1994] ECR I-1353, paragraph 28 of the judgment.

6 — Article 821.1, first subparagraph.

concerning the conclusion of the Cooperation Agreement between the EEC and the People's Democratic Republic of Algeria apply to Mrs Djabali in regard to the award of a disabled adults' allowance where she has never been employed but will be entitled, possibly in December 1997, to a pension in her capacity as a "non-working mother" (mère au foyer)?'

10. The reference to Article 39 of Regulation No 2210/78 should, of course, be to Article 39 of the Agreement.

11. By letter dated 8 April 1997, the CAF informed the Court of Justice that the Ministre du Travail et des Affaires Sociales had decided in November 1996 to grant the allowance to Mrs Djabali. Mrs Djabali had accordingly received FF 148 188.45 arrears and since January 1997 had been in receipt of monthly payments of FF 3 982. The CAF enclosed with its letter to the Court copies of letters (i) from the CAF to Mrs Djabali dated 27 December 1996, informing her that the Ministre du Travail et des Affaires Sociales had decided to grant her the allowance with effect from 1 October 1993, confirming that instructions to make the necessary payment to her had been given and inviting her to withdraw her case from the Tribunal and (ii) from the CAF to the Tribunal dated 6 December 1996, to the same effect.

12. It appears that Mrs Djabali has not taken the necessary procedural steps formally to withdraw her case.

13. By letter dated 11 April 1997, the Registry of the Court of Justice asked the referring court whether it intended to maintain its request for a preliminary ruling.

14. By letter dated 25 April 1997, the referring court informed the Court that it had no power under national procedural rules to withdraw a question duly referred to the Court for a preliminary ruling. Accordingly, it had no option but to maintain the request for a ruling.

15. Written observations were submitted by the applicant, the French Government and the Commission. The French Government and the Commission were represented at the hearing.

Jurisdiction of the Court

16. Mrs Djabali has now, apparently, been granted the benefits to which she claimed entitlement. Although that fact does not affect the admissibility of the reference, since all the conditions for making a reference were fulfilled at the time the reference was made, it must now be doubtful whether a decision on the question referred can be 'necessary' to enable the national court to give judgment, as required by Article 177 of the EC Treaty. In this case, the relevant social security body has, in accordance with

its revised view that Mrs Djabali is entitled to the allowance, apparently made full payment. If that is the case, an answer to the question referred can no longer be regarded as 'necessary' for the national court.

17. The question accordingly arises whether the Court can strike the case off even though the reference has not been formally withdrawn by the national court.

18. In *Chanel* v *Cepeha* [7] the Court of its own motion ordered that a case be removed from the Register of the Court where the reference had 'lost its purpose' following amendment on appeal of the judgment of the national court by which the reference had been made.

19. In cases other than those where the decision to refer is quashed on appeal, the principle appears to be that the Court of Justice must continue the procedure until the reference is withdrawn. [8] Such a course of conduct appears incongruous where, as here, the reference has 'lost its purpose' because the dispute has been resolved but the national court does not withdraw the reference. Indeed there may be a stronger case for not proceeding to a ruling in a case such as the present than in a case where the decision to refer is quashed on appeal: in the latter case, the lower court may have to proceed with the main proceedings without the benefit of a ruling by the Court of Justice, while in cases such as the present the ruling would be given but *ex hypothesi* not applied.

20. Community law does not of course preclude the national court from withdrawing the reference. [9] The question which arises is whether, if the national court does not do so (for example, as is apparently the case here, because it is unable as a matter of national procedure to do so), the Court should none the less strike the case off its Register on the ground that a decision can no longer be necessary.

21. It may, it is true, be dangerous for the Court to strike out the case without further contact with the national court. The Court of Justice will not necessarily be in a position to determine conclusively, on the basis of the information provided by the parties, that there is no need for the national court to continue with the case: that court may conceivably need to continue for some reason which is not apparent from this Court's file. Similarly, it would clearly not be appropriate for the Court of Justice to accept the assertion of one party alone that a settlement has been reached. If, however, the national court and the parties were to be given the opportunity specifically to address the point, the

7 — Case 31/68 [1970] ECR 403.

8 — See Case 43/71 *Politi* v *Italy* [1971] ECR 1039, in particular the Opinion of Advocate General Dutheillet de Lamothe, p. 1054, and Case 106/77 *Amministrazione delle Finanze dello Stato* v *Simmenthal* [1978] ECR 629, paragraph 10 of the judgment.

9 — See Joined Cases C-422/93, C-423/93 and C-424/93 *Zabala Erasun and Others* [1995] ECR I-1567.

Court of Justice could then properly strike the case off its Register in the absence of any reply.

22. Serious problems could arise for the Court of Justice if it continued with the reference. For example, if the litigation giving rise to the reference were settled at an early stage, some or all parties might not submit observations; it might accordingly be difficult for the Court of Justice to give a ruling. Furthermore, if there were several questions, or if the issues raised were complex, it would surely be disproportionate for the Court of Justice to be required to answer questions which were no longer material to the resolution of the dispute which had given rise to them.

23. A solution which might be applied in cases where this problem arises is for the Registry not merely to ask the national court whether it intends to maintain its request, but to ask the national court and the parties whether there are any grounds for considering that a decision on a question is still necessary to enable it to give judgment. If no such reasons were provided, then the case could be struck off on this Court's motion.

24. That solution would be consistent with the principle developed by the Court that the justification for a preliminary reference, and hence for the jurisdiction of the Court, is not that it enables advisory opinions on general or hypothetical questions to be delivered, but rather that it is necessary for the effective resolution of a dispute. [10]

The question referred

25. In this case, the question referred can fortunately be answered — if that should prove necessary — relatively briefly.

26. The French Government argues that the reference is inadmissible since the order contains insufficient information. While it is true that the order is somewhat reticent about the facts, the issue is in my view sufficiently clear for the Court to be able to answer the question.

27. The Court has recognised that Article 39 of the Agreement has direct effect so that persons to whom it applies are entitled to rely on it in proceedings before national courts. [11]

10 — Case 244/80 *Foglia* v *Novello* [1981] ECR 3045, paragraph 19 of the judgment; *Zabala Erasun*, cited in note, paragraph 29.

11 — Case C-103/94 *Krid* v *CNAVTS* [1995] ECR I-719, paragraph 24 of the judgment.

28. It is not clear from the file whether Mrs-Djabali's husband is or was [12] employed in France, although it is suggested by a document on the national court's file that he is a worker. On the assumption that he is or was so employed, then Article 39(1) clearly applies and Mrs Djabali, as a member of his family living with him, is entitled to the allowance.

Conclusion

29. If, following further contact with the national court and the parties and in the light of the responses given to the Court, it transpires that the dispute which gave rise to the reference has indeed been settled and that there are no grounds for considering that a decision on the question referred is still necessary to enable the national court to give judgment, I consider that the Court should either rule that it has no jurisdiction to give a preliminary ruling on the question referred or strike the case off the Register of its own motion.

30. If a ruling proves still to be required, I consider that the question referred by the Tribunal des Affaires de Sécurité Sociale d'Evry should be answered as follows:

Article 39(1) of the Cooperation Agreement between the European Economic Community and the People's Democratic Republic of Algeria, signed in Algiers on 26 April 1976 and approved on behalf of the Community by Council Regulation (EEC) No 2210/78 of 26 September 1978, precludes a Member State from refusing to grant a benefit such as the disabled adults' allowance, which is provided for under its legislation for its own nationals, to the wife of an Algerian who is or has been employed in the Member State concerned and with whom she resides in that Member State, on the ground that she is of Algerian nationality.

12 — 'Worker' in the identically worded provision of the EEC-Morocco Cooperation Agreement encompasses former worker: Case C-18/90 *Kziber* [1991] ECR I-199, paragraph 27 of the judgment.